Supreme Court of the United States

October Term, 1949

No. 124

RICHARD LAWRENCE,

Petitioner,

vs.

JOSEPH L. WOODS, Sheriff of Cook County, Illinois, and WINSTON M. MOORE, Warden of the Cook County Jail,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Assistants State's Attorney,
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OPINIONS BELOW

The District Court for the Northern District of Illinois did not render a written opinion in dismissing the petition for a writ of habeas corpus. The opinion of the Court of Appeals for the Seventh Circuit (App. A. of the Petition) is reported at 432 F. 2d 1072 (C.A. 7th Cir. 1970). The opinion of the Supreme Court of Illinois (App. B. of the Petition) affirming the Petitioner's conviction in the Circuit Court of Cook County, Municipal Division is reported at 42 Ill. 2d 461, 248 N.E. 2d 71 (1969).

JURISDICTION

The Petition adequately sets forth the relevant jurisdictional requirements.

QUESTION PRESENTED

Whether the "Supremacy Clause" (Art. VI, Sec. 2, United States Constitution) requires that the Supreme Court of the State of Illinois, in deciding the constitutionality of a Chicago penal ordinance, must follow the opinion of the lower Federal Court delivered in a different case dealing with the same penal ordinance, where the lower Federal Court decision is rendered prior to the decision of the Illinois Supreme Court.

STATUTES AND ORDINANCES INVOLVED

The pertinent provisions of the United States Constitution (Art. III, Sec. 1; Art. VI, Sec. 2), the United States Code (Title 28, § 2241), and Chicago Municipal Code (Ch. 11, § 33) are set forth in the Petition at pp. 2-4.

STATEMENT OF THE CASE

Richard Lawrence, hereinafter referred to as petitioner, comes before this court seeking a Writ of Certiorari to the Court of Appeals for the Seventh Circuit. He urges this court to review the judgment of the Court of Appeals affirming the District Court's dismissal of his petition for a Writ of Habeas Corpus.

On October 16, 1967, petitioner was found guilty of interference with a police officer in the performance of his duty by a jury in the Municipal Court of Chicago in violation of Chapter 11, Section 33 of the Municipal Code of the City of Chicago. The petitioner was fined $100.00 for this offense.

The petitioner appealed this conviction directly to the Illinois Supreme Court. However, prior to the Illinois Supreme Court's hearing of that appeal, the district court for the Northern District of Illinois struck down Chapter 11, Section 33 of the Chicago Municipal Code in the case of *Landry* v. *Daley,* 280 F. Sup. 968 (D.C. N.D. Illinois, 1968), holding that the ordinance was unconstitutional on its face. The appeal taken by defendant Daley to the Court of Appeals was dismissed *per curiam* for mootness. *Landry* v. *Daley,* 410 F. 2d 551 (C.A. 7th Cir., 1969).

The Illinois Supreme Court affirmed the conviction of petitioner in an opinion discussing the merits of the questioned ordinances. *City of Chicago* v. *Lawrence,* 42 Ill. 2d 461, 248 N.E. 2d 71 (1969). In affirming petitioner's conviction, the Illinois Supreme Court did not refer to the Federal District Courts prior declaration of the invalidity of the ordinance. Petitioner, therefore, sought an appeal to this court. His appeal was dismissed and this court, treating the jurisdictional statement as a peti-

tion for a Write of Certiorari, denied certiorari. *Lawrence* v. *Chicago,* 396 U.S. 39, 24 L. Ed. 2d 208 (1969).

On January 8, 1970, the petitioner appeared before the presiding judge of the First Municipal District of the Circuit Court of Cook County upon the mandate of affirmance by the Illinois Supreme Court, and upon his refusal to pay the $100.00 fine, the sentence imposed upon his conviction, he was remanded to the custody of the Sheriff of Cook County to be placed in the House of Correction there to serve the fine. Following his confinement, petitioner filed a habeas corpus petition in the Federal District Court which was dismissed on the merits (R. 7, July 8, 1970). On January 9, 1970, petitioner filed notice of appeal (R. 8). While the appeal from the dismissal of the habeas corpus petition was pending in the Court of Appeals, the petitioner, having served the requisite time in jail, was discharged from custody.

Petitioner's appeal presented two issues for decision by the Court of Appeals; First, whether the cause was moot; secondly, whether the Illinois Supreme Court was bound by the District Court's prior adjudication in *Landry* v. *Daley,* 280 F. Supp. 968 (D.C. N.D. Ill. (1968)).

The Court of Appeals for the Seventh Circuit after deciding that the case was not moot, held that the Illinois Supreme Court was not bound by the District Court's prior adjudication in *Landry,* supra. *Lawrence* v. *Woods,* 432 F. 2d 1072 (C.A. 7th Cir. 1970). Petitioner urges this court to review that holding.

ARGUMENT

The substantive issue decided by the Court of Appeals for the Seventh Circuit, and upon which the petitioner here seeks review, was whether the Supreme Court of Illinois was bound by a decision in a different case dealing with the same statute delivered by the Federal District Court in *Landry* v. *Daley,* 280 F.Sup. 968 (D.C. N.D. Ill. 1968).

The Court of Appeals, in an opinion authored by Chief Judge Swygert, held unanimously that the precedent set by an unreviewed lower Federal Court decision is at best persuasive and certainly not binding on State Appellate tribunals. The court below analyzed state court opinions on the issue presented, noting that there were no federal court decisions on the issue; and further analyzed the issue in terms of appellate jurisdiction. The court stated that since the lower federal courts have no power to review State Supreme Court opinions, therefore, precedent set by a lower Federal Court is not binding on state courts in cases of this type.

I.

THE DECISION BELOW IS CLEARLY CORRECT.

The crux of the issue presented to the Court below developed upon the precedental value of a lower Federal Court decision. Petitioner sought to invest a lower Federal court decision with all the weight and authority of a decision of this court. Clearly, a decision of a lower Federal Court, while it may be persuasive on questions arising in other similar fact situations, must be read in light of the fact that the decision is subject to review, restructuring and amplification at both the Circuit Court

of Appeals level and at the Supreme Court level. Indeed the fragility of the specific district court opinion in *Landry* v. *Daley,* supra, becomes apparent upon a study of the subsequent developments in that complex series of litigation, beginning with the original district court opinion at 280 F. Sup. 968, and culminating in the final disposal of those issues by this court's opinion in *Boyle* v. *Landry,* 39 L.W. 4207 (Docket No. 4, February 23, 1971). The petitioner, however, was misled by the illusion of finality in which a lower Federal Distirct Court opinion is clothed. In his arguments before the court below he has attempted to extend the supremacy clause of the United States Constitution (Art. VI, Sec. 2) to include what may be accurately described as a contingent adjudication, since the decision is subject to review at two appellate levels before it becomes clothed with any hint of finality. Realizing this, the court below relied on the case of *Iowa National Bank* v. *Stewart,* 214 Iowa 1229, 235 N.W. 445, 454 (1930) where the Iowa Supreme Court stated:

> "The federal Circuit Courts of Appeals and, in respect to federal law, the state courts of last resort are subject to the supervisory jurisdiction of the Supreme Court of the United States. They are, however, as to the laws of the United States, co-ordinate courts. Finality of determination in respect to the laws of the United States rests in the Supreme Court of the United States. Until the Supreme Court of the United States has spoken, state courts are not precluded from exercising their own judgment upon questions of federal law. They are not concluded by, though they should give respectful consideration to, the decisions of the federal Circuit Courts of Appeals and District Courts."

It has long been established that this court alone has appellate jurisdiction over the highest state tribunals.

Herndon v. *Georgia*, 295 U.S. 441 (1935); *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 4 L. Ed. 97 (1816). Since any rational analysis of the value of a federal district court decision precedent must look towards the finality of the pronouncement, it would appear that State courts and lower federal courts occupy the same parallel position because both are subject to the reviewing authority of this court. The court below cites with approval the language of the Supreme Court of New Jersey in *State* v. *Coleman*, 46 N.J. 16, 214 A. 2d 393, 402, 403 (1965). In discussing the affect of lower federal court decisions on subsequent cases arising in state courts the New Jersey Court stated:

> "In passing on federal constitutional questions, the State courts and the lower federal courts have the same responsibility and occupy the same position; there is parallelism but not paramountcy, for both sets of courts are governed by the same reviewing authority of the Supreme Court."

Clearly, the aforementioned state court decisions are well reasoned both in law and in reality. In deciding the issue now before this court in favor of the respondent the court below merely recognized the long existing reality of the relationship between state courts and lower federal courts as being one of parallelism but not paramountcy.

II.

THE DECISION OF THE COURT OF APPEALS DOES NOT GIVE RISE TO ANY IMPORTANT FEDERAL QUESTION.

The petitioner contends that the decision of the court below operates to hamper the federal district courts in the performance of their duty as arbiters of federal con-

stitutional questions. Relying on *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965); *Zwickler* v. *Koota,* 389 U.S. 241 (1967); and *McNeese* v. *Board of Education,* 373 U.S. 668 (1963), the petition contends that those affected by allegedly unconstitutional statutes "are entitled to be free of the burden of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal with no liklihood of obviating similar uncertainty for others" (*Dombrowski* v. *Pfister,* 380 U.S. at 461). While this may be the case, the issue presented is not whether declaratory or injunctive relief would be appropriate in a given situation, but rather, whether a lower federal court decision delivered prior to a state Supreme Court decision should bind the state court. The petitioner's argument that the decision of the court below will hamper district courts in protecting the interests of those who have sought a declaration as their rights ignores the line of cases recently decided by this court. See *Younger* v. *Harris,* 39 L.W. 4201 (Docket No. 2 February 23, 1971); *Boyle* v. *Landry,* 39 L.W. 4207 (Docket No. 4, February 23, 1971); *Samuels* v. *Mackell,* 39 L.W. 4211 (Docket No. 7-9, February 23, 1971), *Perez* v. *Ledesma,* 39 L.W. ——, (Docket No. 60, February 23, 1971). These cases have set forth with as much precision as possible the situations in which a district court may properly bring into play its equitable power to enjoin state prosecutions under statutes and ordinances which they declare unconstitutional. Interference by the lower federal courts in state affairs beyond the boundary delineated by these cases has been severely criticized by this court as being contrary to the concept of federalism under which this nation has long endured. The decision of the court below leaves unimpaired the equitable powers of Federal District Courts to enforce their judgments

in situations where the aforementioned line of cases deem it appropriate.

Furthermore, the Illinois Supreme Court in the recent case of *People* v. *Stansberry,* —— Ill. 2d ——, (Docket Nos. 40386, 42521, 43126, consolidated, 1970) (Respondent's Appendix A) held in a clearly reasoned decision that it will not consider itself bound by a lower federal court decision until such time as this court has seen fit to review the federal court's decision. *Stansberry* dealt with the issue of whether a defendant was entitled to inquire behind a search warrant and the affidavit supporting it. Prior to the Illinois Supreme Court's decision in *Stansberry,* the Court of Appeals had held that search warrant affidavits issued under a false or fictitious name were void (*United States ex rel. Pugh* v. *Pate,* 401 F. 2d 6 (7th Cir. 1968). In deciding that it would not be bound by the lower federal court's decision, the Illinois Supreme Court stated:

> "We find the question to be an illusive one though it is discussed generally in an annotation in 147 A.L.R. 857 and in 21 C.J.S. Courts, Sec. 206. These references indicate lack of unanimity among the several States with the majority favoring the rule that such decisions have no binding effect until the issue is considered by and determined by the Supreme Court. This would appear to be the most logical conclusion, for oftentimes there is a conflict between decisions of the various Federal Courts on constitutional matters, and until determined by the United States Supreme Court there can be no definitive ruling by which a state court can be bound." (*People* v. *Stansberry,* Resp.App. A)

The *Stansberry* decision taken together with the decision of the court below shows that there is no conflict between the state and federal courts in the Seventh Cir-

cuit on the issue now before the court. Given the common-sense, well reasoned decision of the court below, the respondent contends that review by this court of the instant cause is unwarranted.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the instant petition for a Writ of Certiorari should be denied.

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APPENDIX A

Docket Nos. 40386, 42521, 43126 cons.—Agenda 17—September, 1970.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, vs. CHARLES STANSBERRY, Appellant.—SAME, Appellee, vs. JAMES HARVEY, Appellant.—SAME, Appellee, vs. LJNNIE HATCH, Appellant.

Mr. JUSTICE KLUCZYNSKI delivered the opinion of the court:

On separately docketed direct appeals to this court, these cases have been consolidated because there is a similarity of facts and similar application of a legal principle. Defendants Charles Stansberry and Lonnie Hatch were found guilty in the circuit court of Cook County of the crime of illegal possession of heroin, a narcotic drug. They were convicted in a bench trial and sentenced to the penitentiary for terms of not less than two nor more than four years, and not less than two nor more than two years and a day respectively. After a jury trial, defendant James Harvey was found guilty in the circuit court of Cook County of the crime of possession of marijuana, a narcotic drug, and sentenced to the penitentiary for a term of not less than two nor more than five years.

Each defendant contends that his constitutional rights were violated by the refusal of the trial court to quash the search warrants and suppress the incriminating evidence produced by the execution of said warrants. It is argued that the allegations of the complaints which led to the finding of probable cause by a judicial officer in

the first instance were false and fraudulent and that they should have a right to controvert those allegations. In addition, each defendant contends that a warrant issued pursuant to an affidavit signed with a false or fictitious name is void.

We have recently had occasion to consider the first question posed and have held that there is no constitutional or statutory right to controvert the matters decuared under oath which occasioned the finding of probable cause and the issuance of a search warrant by a judicial officer. (*People* v. *Mitchell,* 45 Ill. 2d 148; *People* v. *Bak,* 45 Ill. 2d 140, *cert.* denied, October 26, 1970, 91 S. Ct. 117.) We have likewise been urged, as we are in these cases, to reconsider the *Bak-Mitchell* decisions and we have declined to do so. (*People* v. *Nakon,* 46 Ill. 2d 561.) Once again we find no reason to change our opinion and, based on the reasoning of the above cases, we find that the trial court properly refused to permit defendants to challenge the truth of the affidavits upon which the finding of probable cause was based.

In support of their contention that the search warrants were void, defendants cite *United States ex rel. Pugh* v. *Pate* (7th cir. 1968), 401 F. 2d 6, holding that a warrant issued pursuant to an affidavit signed with a false or fictitious name is void. Contrary to this finding we have previously held that the use of a fictitious name by an affiant to a search warrant does not constitute a violation of a defendant's constitutional rights. (*People* v. *Mack,* 12 Ill. 2d 151; *People* v. *Smth,* 40 Ill. 2d 501.) The question thus presented is whether the *Pugh* case has any binding effect on this court when the issue has not been passed on by the United States Supreme Court. We find the question to be an elusive one though it is discussed generally in an anno-

tation in 147 A.L.R. 857 and in 21 C.J.S. Courts, sec. 206. These references indicate a lack of unanimity among the several States with the majority favoring the rule that such decisions should have no binding effect until the issue is considered and determined by the Supreme Court. This would appear to be the most logical conclusion, for oftentimes there is a conflict between decisions of the various Federal courts on constitutional matters and until finally determined by the United States Supreme Court there can be no definitive ruling by which a State court can be bound. (See: *Lawrence* v. *Woods* (7th cir.), —— F. 2d ——, (8 Cr. Law Rptr. 2084.) For instance, on the question first posed in this opinion some lower Federal courts have held that a defendant is not entitled to inquire behind a search warrant and the affidavit supporting it, (*Kenny* v. *Unted States* (D.C. cir.), 157 F. 2d 442; *United States* v. *Gianaris* (D.C.D.C.) 25 F.R.D. 194) whereas the contrary view is expressed in *United States* v. *Suarez* (2d cir.), 380 F. 2d 713; *United States* v. *Gillette* (2d cir.), 383 F. 2d 843; *United States* v. *Roth* (7th cir.), 391 F. 2d 507. And the United States Supreme Court has not yet ruled upon the question. (*Rugendorf* v. *United States,* 376 U.S. 528, 11 L. Ed. 2d 887, 84 S. Ct. 825.) Under such circumstances decisions of the lower Federal courts can be held to be no more than persuasive and certainly not binding on State courts.

Following our previous decisions in *People* v. *Mack,* 12 Ill. 2d 151, and *People* v. *Smith,* 40 Ill. 2d 501, we reaffirm that the use of a fictitious name by an affiant to a search warrant does not constitute an abridgement of constitutional rights. *People* v. *O'Kiersey,* 46 Ill. 2d 198.

We shall now discuss the additional points raised by defendants Hatch and Harvey.

Hatch contends that the police officers did not file and docket the search warrant until after it was served and he was arrested. This procedure admittedly was in compliance with section 108—4 of the Code of Criminal Procedure (Ill. Rev. Stat. 1969, ch. 38, par. 108—4) which provides in part that a complain upon which a warrant is issued need not be filed with the clerk until the warrant has been executed or has been returned "not executed." He argues that the statute itself is unconstitutional because it permits and "encourages uncontrolled and unsupervised police harassment and intrusion upon a citizen in his home," and affords o remedy to the innocent in whose home nothing incriminating is found. Such argument ignores the fact that before a warrant is issued a written complaint must be submitted to a judicial officer, as in this case, which states facts sufficient to show probable cause and particularly describes the place or person to be searched and the items to be seized. The purpose of the statute questioned is as stated in the Committee Comments, "* * * to enhance the law enforcement process by providing for a lack of public knowledge concerning the warrant until it has been executed." (S.H.A. ch. 38, § 108—4.) We find no constitutional objection to exercising such precautions as may be necessary to forestall the possibility of one obtaining foreknowledge of an impending search. See: *People* v. *Price,* 46 Ill. 2d 209.

Harvey contends that the police wrongfully delayed one day after issuance of the warrant before executing it in order to inculpate him for the offense, that a statement of his was improperly admitted into evidence when admittedly he had not previously been warned of his constitutional rights, that the trial court erred in not forcing the State to produce the affiant on the complaint for a search warrant

at the trial, that he was not proved guilty beyond a reasonable doubt, and that his sentence was excessive.

The search warrant was issued on October 28, 1967, and provided for a search of the person and the premises at the headquarters of the Afro-American Student Association, located at 3856 S. Parkway in Chicago. It was not served until the next day, October 29, because the police had learned that Harvey was not present at the Association office but that he was expected the next day. When the police did approach the office they were met by a young lady, and upon identifying themselves, they were admitted. According to the police warrant was presented to Harvey and he read it in the presence of four other men. The officers, accompanied by Harvey, searched the premises consisting of three small rooms. In one of the rooms they found boxes and bags of old, dirty clothes and shoes and on the wall, hanging on hangers, a trench coat and several clean shirts. They testified that they asked Harvey whether the trench coat and clean shirts were his and he stated that they were. He was also asked about the clothing in the boxes on the floor and he said that it belonged to him too. The police then searched all the clothing and in the pocket of the trench coat found five small brown envelopes containing the marijuana in question. Upon showing Harvey the marijuana they placed him under arrest and took him and the other individuals present to the police station.

Harvey testified that he was a member of the Association and that the clothing in question was being collected by the Association members in a clothing and fund drive. He stated that when the officers entered they identified themselves, asked everyone to have a seat, and presented him with the warrant which he read. He was not told he

was under arrest but he said he thought he was treated as if he were. He was not told that he was free to go. He denied stating that the trench coat belonged to him and stated it was a small lady's coat which had been collected in the drive. He stated that before the police said they found the marijuana he had responded to their questions about the clothes but only to the effect that he was responsible for all of them as co-ordinator of the drive.

The officers testified that the coat looked to be about Harvey's size but it was not inventoried and its whereabouts at the time of trial was unknown, and that Harvey did not wear a coat to the police station. Pictures were introduced showing him without a coat at the station and the others with different types of outer apparel. Harvey stated that he wore a coat to the station but had left it in his cell when the pictures were taken.

From these facts we find that the execution of the search warrant was in compliance with section 108—6 of the Code of Criminal Procedure (Ill. Rev. Stat., 1969, ch. 38, par. 108—6) which provides that warrants shall be executed within 96 hours from the time of issuance. The warrant called for a search of the person as well as a search of the premises, so that delay until the officers were sure Harvey would be present, was justified.

Defendant Harvey contends that he was not advised of his constitutional rights before he made incriminating statements as required by *Miranda* y. *Arizona,* 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602. The question is whether the statement of Harvey relative to the trench coat arose out of custodial interrogation. "The *sine qua non* for invoking the *Miranda* rule is that the interrogation be focused on the accused while he is 'taken into custody or otherwise deprived of his freedom of action [by authori-

ties] in any significant way.' 384 U.S. ata 444, 16 L. Ed. 2d at 706, 86 S. Ct. 1602." (*People* v. *Fischetti,* Docket No. 43019.) Here upon entry, the police, according to Harvey's own testimony, asked those present to be seated, presented the warrant to him, and then after he had read it and before conducting the search they made the normal and ordinary inquiry concerning the clothes which were scattered about the office. Under these circumstances he was not then deprived of his freedom of action in any significant way. The compulsion and danger of intimidation that the *Miranda* rule was designed to eliminate was clearly not present. Accordingly the trial court did not err in admitting the answer of defendant Harvey into evidence.

Harvey next contends that the affiant in the complaint for the search warrant should have been made available to him as his witness at the trial on the merits, as the witness might have been able to exculpate him. He cites *Roviaro* v. *United States,* 353 U.S. 53, 1 L. Ed. 2d 639, 77 S. Ct. 623, and a number of other cases to the effect that fundamental fairness demanded the presence of affiant at the trial. But unlike the facts in *Roviaro,* the affiant here merely appeared before the judge who issued the search warrant. He was not present at the time the warrant was served nor at Harvey's arrest. Whether he would have been able to identify Harvey as the individual he described in his complaint would relate only to the question of probable cause for the issuance of the search warrant and would have had no bearing on guilt or innocence of the crime charged. Under such circumstances we have frequently held that *Roviaro* is not applicable and that it is not error to deny the production of such a witness where his testimony would not be relevant. *People* v. *Mack,* 12 Ill. 2d 151; *People* v. *Williams,* 38 Ill. 2d 150; *People* v. *Connic,* 34 Ill. 2d 353.

Finally, defendant Harvey contends that he was not proved guilty beyond a reasonable doubt and that his sentence was excessive. After a careful review of the evidence, we find it fully sufficient to support the jury's verdict and not, as he contends, so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of guilt warranting our interference on review. (*People* v. *Mack,* 12 Ill. 2d 151.) Likewise, we find no abuse of discretion on the part of the trial court on the imposition of sentence. Defendant Harvey was afforded a fair and complete hearing in aggravation and mitigation and his punishment was well within the statutory limits. Under such circumstances the trial court was in a far superior position than we to make a sound determination concerning the punishment to be imposed. *People* v. *Taylor,* 33 Ill. 2d 417.

For the reasons stated the judgments of the circuit court of Cook County in each of the cases here reviewed, People v. Stansberry, People v. Hatch, and People v. Harvey, are hereby affirmed.

Judgments affirmed.